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David L. Meier
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September 15, 1997

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SEP 15 1997

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington DC 20554

In the Matter of:

Implementation of The Subscriber Carrier Selection
Changes Provisions of the Telecommunications Act
of 1996 and Policies and Rules Concerning Unauthorized
Changes of Consumers' Long Distance Carriers

CC Docket No. 94-129

Dear Mr. Caton:

Enclosed are an original and eleven copies plus two additional public copies of Cincinnati Bell Telephone Company's Comments to the Further Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration in the above referenced proceeding. A duplicate original copy of this letter and attached Comments is also provided. Please date stamp this as acknowledgment of its receipt and return it. Questions regarding these may be directed to the undersigned.

Sincerely,

David L. Meier

Enclosure

cc: Cathy Seidel, Common Carrier Bureau (copy and diskette)
Formal Complaints Board, Enforcement Division (two copies)
International Transcription Services, Inc

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Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

SEP 15 1997

In the Matter of)

Implementation of the Subscriber Carrier)
 Selection Changes Provisions of the)
 Telecommunications Act of 1996)

CC Docket No. 94-129

Policies and Rules Concerning)
 Unauthorized Changes of Consumers')
 Long Distance Carriers)

COMMENTS OF CINCINNATI BELL TELEPHONE COMPANY

I. INTRODUCTION

In its Further Notice of Proposed Rulemaking ("NPRM"), the Commission seeks comments on proposed modifications to its rules in order to implement provisions of the Telecommunications Act of 1996 (the "Act") related to changes by subscribers of their selected carrier.¹ Cincinnati Bell Telephone Company ("CBT"), a mid-size local exchange carrier ("LEC"), files these comments in response to the issues raised by the Commission related to improper alteration of a subscriber's selected carrier or "slamming."

CBT submits that when a customer has been slammed by a long distance provider, they have looked to their provider of local exchange service to assist them in remedying the matter. As a neutral third party, the local exchange carrier ("LEC") has been able to serve

¹ The Act makes it unlawful for any telecommunications carrier to submit or execute a change in the subscriber's carrier selection without following the Commission's verification procedures. The Act further provides that any carrier which violates these procedures and collects charges for telecommunications services from a subscriber after a violation shall be liable to the subscriber's properly authorized carrier for all charges collected.

such a function. As the market for telecommunications services becomes increasingly competitive, with the bundling of both local and long distance service, the issue of slamming will become much more complicated. No longer will there be a neutral third party who can act as the arbiter of the dispute between the consumer and the slamming carrier, in that the service switched may be the customer's local service as well as their long distance service. In this environment, CBT asserts that the Commission and state regulatory bodies will be forced to take a more active role in enforcing their regulations prohibiting slamming and in arbitrating disputes between consumers and carriers who have altered these consumer's service without proper authorization. Therefore, to prevent the continuing proliferation of slamming complaints and to lessen the burden which will be imposed on regulatory bodies if this trend continues, the Commission must strengthen the enforcement of its existing regulations. It must also remove any economic incentives which exist for carriers who slam customers and must impose fines and penalties on those who have a continuing pattern of violating the Commission's regulations.

Consumers are often slammed by the use of deceptive marketing tactics by certain carriers. In these situations, a carrier may represent itself to the customer as acting on behalf of the local telephone company, when in fact the carrier has no such authority. Further, the carrier may seek to induce the customer to change carriers by the use of promotional materials in the form of checks, but which are actually letters of agency ("LOA") purporting to authorize a carrier switch. At times, service has been switched even though the customer was never contacted by the switching carrier.

In CBT's territory, it is possible that the state commissions in both Ohio and Kentucky will be forced to take steps to control slamming beyond what is adopted by the Commission in this proceeding. Recently, several other states, including Montana, New York, Texas, California, South Carolina, Florida and Georgia, have acted independently of the Commission to impose stricter penalties against those carriers who improperly alter a customer's service.²

II. DISCUSSION

A. Existing Verification Procedures Should Be Enforced.

If followed and strictly enforced, the Commission's existing verification procedures should prevent slamming. The Commission must allow for market flexibility, and should ensure that customers are not burdened with burdensome administrative requirements. Thus, the Commission must balance the desire of customers for access to service with the need to protect customers from unauthorized changes in their service. In order to accomplish these dual goals, the Commission must investigate and adjudicate customer complaints in a timely manner.

CBT and certain other LECs operate in jurisdictions that allow two primary interexchange carriers to be selected, one for intrastate service and one for interstate service. CBT submits that, in those situations, the verification procedure must contain separate information and authorization for each selection. Likewise, CBT submits that where local and long distance services are being bundled together in a package or where the offer to the

² Communications Resale Report, vol. 2, No. 16, August 18, 1997, at 17.

customer is for the bundling of such services, separate information and authorization for each change should be required and verified.

CBT is also concerned with the number of consumers who are deceived by LOAs that are in the form of a promotional or marketing solicitation. CBT submits that for consumers to be protected, the LOA must be a separate document, the sole purpose of which is to authorize a change in the consumer's service provider. The separation of the LOA from any inducements being offered is necessary to insure that consumers are clearly informed as to the decisions they are being asked to make.³ CBT asserts that, in prohibiting negative option LOAs, the Commission should clarify that an inducement check must be separated from the LOA authorizing a change in service.

B. Resellers

With the advent of an increasingly competitive environment, local exchange service will often be provided by a reseller. As a result of this, there will often be a great deal of confusion on the part of consumers as to who actually provides service. CBT, therefore, urges the Commission to take steps to insure that confusion is minimized by requiring resellers to notify consumers of the underlying carrier who is providing their service.

CBT opposes the proposal offered by the Telecommunications Resellers Association ("TRA") to establish a bright-line test for the determination of when consumer notification of the underlying carrier's identity will be required of resellers.⁴ Under TRA's proposal,

³ See, e.g., Comments of Sprint, Comptel, Missouri PSC, Consumer Action, NYNEX, and LDDS Communications, filed June 14, 1995, *1995 Report and Order*.

⁴ NPRM at ¶ 38.

consumer notification would be required only if a reseller either: "(1) identified its underlying network provider to its subscribers and committed to those subscribers in writing that it would not switch networks; or (2) identified its network provider on a bill or other correspondence to its subscribers within six months prior to the change in network provider."⁵ Under this proposal, if neither of these circumstances existed, a reseller could lawfully change its underlying carrier without notifying its subscribers.

CBT submits that a reseller must identify its network provider to a subscriber at the time the service begins, as well as any time the service is changed. CBT further submits that in the case of resale of local service, the customer will initially know that CBT or another incumbent LEC is the ultimate provider of the service. In a competitive environment, name and product identification become increasingly important for providers. If a reseller switches underlying service providers from the incumbent to another carrier and experiences a degradation in the service being provided, then the consumers will assume the degradation is caused by the incumbent LEC, unless they are notified of the change in underlying service provider. In order to both insure that consumers are fully informed and to protect the competitive environment envisioned by the Act, CBT submits that resellers must keep their customers informed as to who is providing the underlying service.

C. Liability Issues

The Commission requests comment on the liability of consumers for charges incurred after they have been slammed.⁶ Specifically, the Commission asks whether consumers

⁵ Id.

⁶ NPRM at ¶ 27.

should be liable for the total amount billed by the unauthorized IXC; the amount the consumer would have paid had the PIC not been changed; or no liability at all.

CBT agrees with the Commission that the consumer should be made whole by being responsible only for the amount they would have been charged for the service used had the PIC not been changed.⁷ CBT submits that consumers should not pay in excess of the amount they would have been charged had they not been slammed. Rather, the consumer should pay the properly authorized carrier upon being rebilled for the service used by that carrier. Any monies collected by the slamming company should be turned over to the authorized carrier and credited to the customer's account.

Where the slamming company charges a lower rate than the authorized carrier, the authorized carrier should have the option of billing the slamming company to recover the amount lost from the slamming. CBT submits that, in order to deter slamming, the slammer must be denied revenue gained from this unlawful conduct. Moreover, the slamming company should also be liable to the LEC and/or authorized carrier for any non-recurring charges resulting from the unauthorized changes. Further, CBT submits that the Commission should consider imposing and enforcing substantial fines and penalties against carriers who have a continuing pattern of slamming customers. To allow the consumer to make no payment, however, would possibly encourage fraud, as consumers could claim a wrongful alteration of their service in order to avoid legitimate charges.

⁷ See 1995 Report and Order, 10 FCC Rcd at 9579.

D. Verification of Inbound Calls

The Commission requests comment on the practice of encouraging consumers to authorize a PIC change when they call either a LEC or IXC business office for other reasons, and the effect such practices has upon consumers.⁸ In response to the concerns raised by the Commission, CBT submits that it has not encountered problems related to inbound calls, and therefore, states that it is not necessary for the Commission to extend current PIC change verification procedures to inbound calls. CBT agrees with the Commission that the lack of a record makes it difficult to ascertain the facts in an inbound slamming dispute.⁹ However, the burden created by this lack of documentation should be borne by the carrier, in that the Commission should implement a strict liability policy on carriers who utilize no verification method on inbound calls. This procedure would insure that the customer is protected and the risk is on the carrier.

E. Application of Rules to Incumbent LECs

The Commission seeks comment on "whether incumbent LECs should be subject to different requirements and prohibitions because of any advantages that this [incumbency] gives them compared to carriers that are seeking to enter the local exchange markets."¹⁰ The anti-slamming provisions of Section 258 of the Act apply equally to all carriers, with the ultimate requirement that the Commission administer the provisions of the Act in a competitively neutral manner. Therefore, CBT asserts that all of the Commission's

⁸ NPRM at ¶ 20.

⁹ NPRM at ¶ 20.

¹⁰ NPRM at ¶ 15.

regulations related to the implementation of provisions of the Act, including Section 258, must be applied equally to all carriers. Any other application of rules by the Commission would place LECs at a competitive disadvantage.

F. Application and Preferred Carrier Freezes

The Commission seeks comment on "whether our PIC change verification procedures should be extended to PC freeze solicitations."¹¹ Even prior to the emergence of competition in either the long distance or local markets, customers demanded that LECs prevent unauthorized changes in their service. Code words, a practice continued today, were utilized to prevent someone other than a customer from making changes to the customer's account. The Commission must recognize the need for such customer protection procedures to be continued. Therefore, CBT submits that PC freezes should continue as a necessary protection procedure for customers.

Further, CBT submits that the customer must be allowed to place individual PC freezes on the interexchange / intraLATA and local service. To prevent customer confusion, however, blanket freezes protecting all classifications of service should not be permitted. Thus, if a customer changes their carrier for one type of service (e.g. local), then their existing PC freezes on other services (e.g. toll service) should remain in effect.

CBT supports the Commission's tentative conclusion that any PC solicitations should be informational rather than promotional. A carrier should be able to send the customer information under this proposal that contains information about PC freezes, the customer's

¹¹ NPRM at ¶ 21.

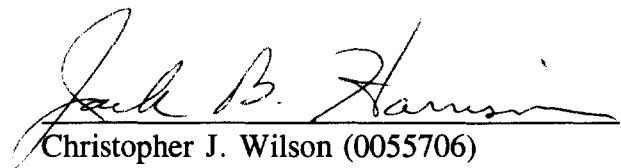
right to request such a freeze, and the procedure for obtaining such a freeze.¹² Further, CBT would support the required use of a Commission-approved PC Freeze notification and response card, in that such a form would likely facilitate informed customer requests for this service.

Verification procedures for freezes should not be mandated. Often, the request for a freeze is made at the time when the consumer has been slammed. At this point, the consumer should not be subjected to additional regulations in the process of the resolution of their concern.

III. CONCLUSION

CBT submits that slamming may well become an increasing problem as the market for telecommunications services becomes more competitive. As a result of this, CBT respectfully requests that the Commission consider all of the foregoing as it develops further rules related to this issue.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jack B. Harrison", is written over a horizontal line.

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¹² NPRM at ¶ 23.

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Filed: September 15, 1997

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of Cincinnati Bell Telephone Company's Comments to the Further Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration have been sent by first class United States Mail, postage prepaid, or by hand delivery, on September 15, 1997, to the persons listed on the attached service list.


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